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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington DC 20554

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Federal Communications Commission
Office of Secretary

In the matter of

Implementation of the
Telecommunications Act of 1996
Accounting Safeguards under the
Telecommunications Act of 1996

CC Docket No. 96-150

**RESPONSE OF AMERITECH TO
PETITIONS FOR RECONSIDERATION**

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April 2, 1997

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SUMMARY

The Commission should reject attacks on the exception to the affiliate transaction rules that allows the use of “prevailing” prices to value sales to a Section 272 affiliate even where sales to unaffiliated third parties do not meet the 50 percent threshold, since the very possibility of a sale is more than enough to supply a safeguard against abusive carrier pricing.

APCC’s arguments seeking separate books for nonregulated payphone services and other relief have already been considered in the present docket and the payphone docket and should be rejected again.

Ameritech continues to support a slight modification to Section 32.27(c) of the rules to permit the use of fully distributed cost as a valuation standard for services that a carrier provides to an affiliate when the affiliate exists solely to provide services to the carrier’s corporate family.

Ameritech also believes that SBC’s proposals to modify the “Form 10-K” reporting requirements in Section 274 should be adopted.

Ameritech also supports SBC's proposal to reconsider the application of Section 61.45(d)(1)(v) of the Commission's price cap rules to the reassignment of investment from regulated to nonregulated.

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**I. MCI's Attacks on the Section 272 Valuation Standard
Should Be Rejected.**

In its Report and Order,¹ the Commission has elaborated upon its rules for evaluating transactions between carriers and their affiliates and has said that sales to third parties may be used as the "prevailing" price only when annual sales of the product or service in question to third parties exceed 50 percent of total sales of that product or service.² However, the Commission also allowed for an

¹ *In re* Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996, CC Docket No. 96-150, Report and Order, FCC 96-490, released Dec. 24, 1996 (hereinafter "Order").

² Order at ¶ 135.

exception in the case of products and services furnished by the BOC to an affiliate established under Section 272. Observing that the rates for services under Section 272 must be made generally available to both affiliates and third parties, the Commission adopted a rebuttable presumption that these rates represented prevailing company prices.³

MCI opposes this exception to the new rule for the reason that allegedly there is no evidence that the transfer price would represent the true market value of the asset or service, since the services are unlikely to have third-party buyers. As a result, MCI says, the BOC could set the price below market value which would ultimately reduce a BOC's price cap sharing obligation (MCI at 3-4). MCI also maintains that Section 272(b)(5) requires the use of a prevailing price only in those instances when it represents true market value (MCI at 5).

MCI's arguments should be rejected. First, Section 272(c)(1) and Section 272(e) plainly require that the products and services be made generally available by the BOC to others on the same terms and conditions as the Section 272 affiliate. It makes no difference whether the services *actually* have third party buyers, since the very possibility of a sale is enough to supply a safeguard against carrier

³ As shown in App. B attached to the Order, § 32.27(d) of the rules will provide, "In the case of transactions for assets and services subject to section 272, a BOC may record such transactions at prevailing price regardless of whether the 50 percent threshold has been satisfied."

abuse. In fact, if there are no sales to non-affiliates at a given price, it shows that the price was *not* artificially low, which is just what the Commission's rule is supposed to bring about. Second, the rule establishes only a rebuttable presumption, not some absolutely certainty immune to challenge in all cases. Third, the exemption is narrow in scope and does not apply to services the Section 272 affiliate provides to the BOC. Fourth, since Ameritech and most price cap carriers have elected the no-sharing productivity factor, there is no practical significance to a BOC's sharing obligation, even assuming that a BOC would set a price below market value. Finally, Section 272(b)(5) contains no requirement on the use of prevailing price. Indeed, the valuation standards are not specified at all. Rather, the requirement is that transactions should be conducted on an arm's length basis, reduced to writing, and made publicly available. The modification to the rules meets the statutory requirement.

II. APCC Fails To Raise Any Fresh Payphone Issues.

APCC petitions the Commission to require the BOCs to maintain separate books for nonregulated payphone services and to apply the affiliate transaction rules to nonregulated payphone operations. These issues are the subject of their own separate proceeding and have undergone a long and detailed review, with the Commission reaffirming on reconsideration its conclusions with respect to asset

valuations and the use of separate books of account.⁴ As APCC has raised no new issues on this matter, its petition should be denied.

III. The Commission Should Expand the Exemption and Adopt Thresholds for the Use of Fully Distributed Cost in Valuing Services.

In its Petition for Reconsideration or Clarification filed February 20, Ameritech proposed a slight modification to Section 32.27(c) of the rules to permit the use of fully distributed cost as a valuation standard for services that a carrier provides to an affiliate when the affiliate exists solely to provide services to the carrier's corporate family. As explained in Ameritech's petition, this modification would avoid incurring unnecessary administrative expense and higher ratepayer costs since the increased costs are ultimately billed back to the carrier. Ameritech's proposed revision also recognizes and accommodates the organizational concerns of the independent telephone companies, which may not have a separate services affiliate (GTE at 6-7; Cincinnati Bell at 3, SNET at 3).

GTE also argues that the independents should be given at least as favorable treatment as the BOCs since the BOCs have "an effective dispensation" of the 50 percent threshold condition for use of prevail-

⁴ See *In re Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Order on Reconsideration, released November 8, 1996, at ¶¶ 178-187.

ing price (See GTE petition at 4-5). GTE's argument that the BOCs have an effective dispensation of the 50 percent threshold can only be taken as hyperbole since the exemption is narrow and only pertains to services provided to the Section 272 affiliate, is consistent with the requirements of the Act as described above, and does not apply to services provided to the regulated BOC. With that clarification, Ameritech supports GTE's recommendation to establish a threshold for application of the 50 percent rule based on unaffiliated sales or number of unaffiliated customers (GTE at 6).

Ameritech would further submit that the rule be modified to establish a minimum threshold for requiring that a fair market value be completed for services provided infrequently and whose costs are clearly *de minimis*. A fair market value study should not be required for individual services whose total annual value are less than \$250,000. These revisions to the rules would avoid needless administrative costs.

IV. The Section 274 SEC Form 10-K Requirements Should Be Reconsidered As Proposed by SBC.

SBC maintains that the Commission should not adopt reporting requirements beyond what is necessary to ensure compliance with the requirements of Section 274 of the Act (SBC at 16-18). Ameritech supports this position. If the statute had intended that the electronic publishing affiliate be required to file an SEC Form 10-K, it would

have so stated. However, since the electronic publishing affiliate is not subject to the governance of the SEC, for the Commission to require its submission is regulatory overkill.

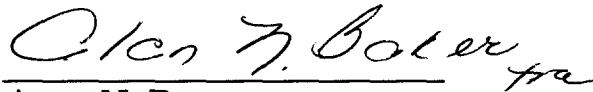
SBC's proposal, in adopting substantial but not identical components of the 10-K, is consistent with the Act and should be adopted. Specifically, SBC's proposals related to the acceptance of unaudited financial statements, a simplified business description, and that selected financial exhibits and information regarding the company's securities should not be required are a balanced approach for purposes of ensuring compliance with Section 274. Since the literal SEC requirements are for the full disclosure and detailed analysis as they relate to the needs of investors, the same level of detail is unnecessary for Section 274 purposes.

V. The Application of Section 61.45(d)(1)(v) for the Reassignment of Investment from Regulated to Nonregulated Should Be Reconsidered.

Ameritech supports SBC's proposal to reconsider the application of Section 61.45(d)(1)(v) of the Commission's price cap rules to the reassignment of investment from regulated to nonregulated. SBC correctly points out that that section of the price cap rules pertains to the shared forecast investment rules of Section 64.901(b)(4) and the Commission's application to all investment reassignments is overbroad (SBC at 11). The only section of the joint cost rules which

addresses reallocation of investment is Section 64.901(b)(4), which deals exclusively with shared forecast investment (See Ameritech's Reply Comments, Allocation of Costs Associated with Local Exchange Carrier Provision of Video Programming Services, CC Docket No. 96-112, June 12, 1996, at 7-9). The Commission has provided no reasoned basis for this new application of the rule and it should be restored to its purpose adopted nearly ten years ago.

Respectfully submitted,

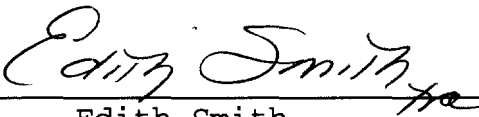
A handwritten signature in cursive script, reading "Alan N. Baker", with a horizontal line underneath it.

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April 2, 1997

PROOF OF SERVICE

I hereby certify that on this 2nd day of April, 1997, the foregoing Response of Ameritech to Petitions for Reconsideration was served by depositing copies thereof in the U.S. Mail at Hoffman Estates, Illinois, addressed to each person shown on the following list.



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